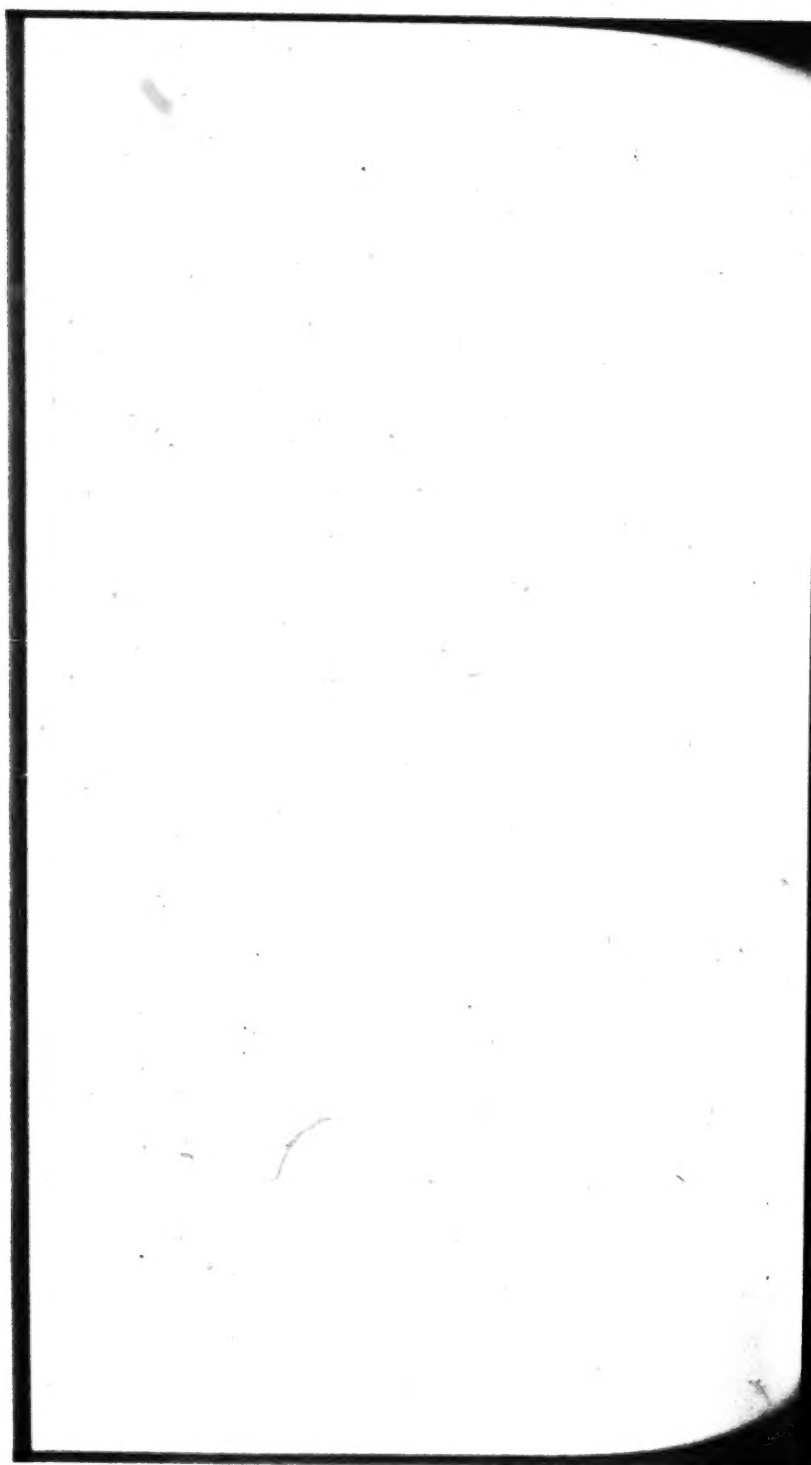


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DOCKET ENTRIES

CIVIL DOCKET UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI

CIVIL No. 18248-2

1970

Proceedings

- Apr 6 Complaint -filed.
Writ and 10 copies issued and delivered to the U.S. Marshal. -filed.
Application(s) (2) & Order Appointing Next Friends -filed.
- Apr 14 Writ bearing return of U.S. Marshal on April 10, 1970 -filed.
Writ bearing return of U.S. Marshal on Dale M. Thompson on April 6, 1970 -filed.
- Apr 22 Plaintiff's Interrogatories to Hubert Wheeler -filed.
Plaintiffs' Interrogatories to Missouri State Board of Education -filed.
Entra (sic) of Appearance of Kuraner, Oberlander, Lamkin & Dingman as attorneys of record for the defendants -filed.
Pre-Trial Order No. 1 -filed. (Discovery by July 20, 1970).
- Apr 23 Motion for Extension of time within which to plead, with suggestions in support -filed.
Order extending to May 20, 1970, for defendants to plead -filed.
- Apr 27 Motion and Memo in support to extend time to answer interrogatories -filed.

- May 1 Stipulation designating action as protracted and complex -filed.
Suggestions in opposition of motion to extend time to answer interrogatories -filed.
- May 14 Order extending time in which defts may object to interrogatories -filed.
- May 25 Order extending time to plead -filed.
Motion & suggestions to extend time to answer or object to plaintiffs' interrogatories -filed.
Motion & suggestions to dismiss or in the alternative for stay of Proceedings -filed.
- Jun 3 Suggestions in opposition to defendants' motion to answer interrogatories -filed.
Suggestions in opposition of motion to dismiss or in the alternative for a stay of proceedings -filed.
- Jun 19 Order -for pretrial conference set for July 8, 1970 at 9:30 a.m. -filed.
- Jul 6 Notice to counsel on discovery -filed.
- Jul 13 Pretrial Order -filed. (Pretrial Order No. 1 is hereby set aside and this case is denominated a protracted case).
- Jul 17 Answers or responses to interrogatories -filed.
- Jul 24 Defendants' objections to plaintiffs' interrogatory No. One -filed.
- Jul 31 Order -filed.
Suggestions in opposition to defendants' objection to plaintiffs' interrogatory No. One -filed.
Motion & Brief in support for Partial Summary Judgment -filed.
Plaintiff's narrative statement of facts for purposes of Partial Summary Judgment -filed.

- Aug 14 Motion, Suggestions & Order extending time to answer interrogatory -filed.
Motion & suggestions for extension of time to respond to plaintiff's motion for Partial Summary Judgment -filed.
- Aug 17 Answers to interrogatories -filed.
Suggestions in opposition to defendants' motion to extend the time for responding to plaintiffs' motion for Partial Summary Judgment and completing the Order Action required by Pretrial Order -filed.
Answers to interrogatories -filed.
- Aug 31 Order of Dismissal -filed. (Dismissed without prejudice)
- Sep 10 Notice of Appeal -filed.
Bond for Cost on Appeal -filed.
- Sep 16 Transcript of Record on Appeal mailed to Court of Appeals.

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- May 25 Judgment of U. S. Court of Appeals -filed. (Ordered and adjudged that the Judgment of the said District Court, be, and the same is hereby reversed. And it is further Ordered by this Court that this cause be and is remanded . . for further proceedings consistent with the opinion of this Court this day filed herein.)
Costs taxed in favor of Appellants. (for recovery from defendants)

REOPENED

- Jun 4 Answer of defendants -filed.
- Jul 29 Order -that all discovery in this case will be closed on Sept. 3, 1971 -filed.

- Aug 11 Notice to take Depositions -filed.
- Aug 24 Order for return of Costs Bond on Appeal -filed.
- Aug 31 Defendants' response to plaintiffs' Narrative Statement of Facts for purposes of Partial Summary Judgment -filed.
- Sep 9 Order setting Pre-Trial Conference for September 22, 1971 -filed.
- Oct 12 Motion & Suggestions to add additional parties Defendants -filed.
Application & suggestions for Preliminary Injunction -filed.
- Oct 15 Response to plaintiffs' motion to add additional parties defendant -filed.
- Nov 12 Request for Production of Documents under Rule 34 -filed.
- Nov 23 Response of defendant Missouri State Board of Education to plaintiffs' request for production of documents under Rule 34 -filed.
- Dec 1 Order Granting motion to add Parties Defendant -filed. (Harvey B. Young, Jr., and Eleanor B. Griffith as members of Mo. State Board of Education & Arthur L. Mallory added as Commissioner of Education, State of Missouri).
- Dec 1 Order -filed. (Plaintiffs' to file narrative statement by December 13, 1971; defendants to reply within 10 days thereafter; Hearing on the temporary injunction is set on Tuesday, December 28, 1971, at 10:00 a.m.)
- Dec 13 Plaintiffs Narrative Statement of Facts for purposes of Preliminary Injunction -filed. (Exhibits submitted)

Dec 22 Defendant's Narrative Statement of Facts in opposition to plaintiffs' application for Preliminary Injunction -filed.

Defendants' Response to plaintiffs' Narrative Statement of Facts for purposes of Preliminary Injunction -filed.

Dec 28 Plaintiffs Response to defendants Narrative Statement of Facts in opposition to plaintiffs Application for Preliminary Injunction -filed.

1972

Jan 12 Deposition of Hubert Wheeler on the part of plaintiffs -filed.

Deposition of Daryle D. McCullough on the part of plaintiffs -filed.

Jan 18 Pretrial Order -filed. (This case is set for trial on February 22, 1972, at 9:30 a.m. on the sole issue of whether or not a Permanent Injunction should be entered in favor of plaintiffs; this does not limit counsel on other evidence at a later trial on any of remaining issues.)

Feb 11 Standard Pretrial Order No. 4 Form mail to counsel this date. -filed.

Order -filed. (American Civil Liberties Union of Western Missouri and Greater Kansas City is granted leave to an amicus curiae brief on or before Feb. 17, 1972.)

Feb 15 Amicus Curiae Brief of the American Civil Liberties Union of Western Missouri and Greater Kansas City -filed.

Feb 16 Plaintiffs' statement of unstipulated facts and plaintiffs' designation of witnesses -filed.

Feb 17 Motion with supporting suggestions for protective order by defts. -filed.

Writ of subpoena to produce showing service on 2-15-72 as to P. J. Newell, Jr. -filed.

Writ of subpoena to testify showing service on Hubert Wheeler on 2-15-72 -filed.

Motion by applicants for intervention to intervene as defendants -filed.

- Feb 18 Stipulation of facts and issues -filed.
 Defendant Wheeler's motion to quash subpoena with suggestions -filed.
 Defendants' statement of unstipulated facts and defendants' designation of witnesses -filed.
- Feb 22 Brief of defendants -filed.
 Plaintiffs trial brief -filed.
 Respective parties appear by counsel for trial. Trial is to the Court and limited to the sole issue of whether a permanent injunction should be entered. Plaintiff introduces testimony and rests. Defendant introduces testimony and rests. Respective counsel are granted ten (10) days after delivery of transcript to file briefs. Exhibit list -filed.
- Mar 7 Plaintiffs' abstract from depositions -filed.
- Mar 9 Transcript of Proceedings of February 22, 1972 -filed.
- Mar 17 Suggestions in opposition to motion by John M. Swomley, Jr., et al to intervene as defendants -filed.
- Mar 20 Supplemental brief of plaintiffs -filed.
 Post Trial Brief of defendants -filed.
- Mar 24 Plaintiffs' reply to new matter in defendants' post-trial brief -filed.

- Jun 2 Memorandum and Opinion -filed. (ORDERED that plaintiffs' prayer for an injunction in this case be and is hereby denied. -filed.)
- Jun 8 Order directing the entry of a Final Judgment -filed. (ORDERED that the Court's Memorandum and Order filed herein on June 2, 1972, shall be designated a final judgment as to plaintiffs' claims for injunctive relief; and FURTHER ORDERED that the Clerk is hereby directed to enter a final judgment under Rule 54(b) of the Federal Rules of Civil Procedure. Defendants' counsel are directed to file a form of final Judgment with the Clerk within five days from this date.)
- Jun 12 Judgment -filed. (It is ordered and adjudged that: plaintiffs' prayer for an injunction is denied; denial of prayer for injunctive relief does not adjudicate other claims of the parties; there is no just reason for delay in this matter and plaintiffs' should be entitled to appeal from the Court's Memorandum and Order filed herein on June 2, 1972; the Court's Memorandum and Order filed herein on June 2, 1972, is designated as a final judgment as to plaintiffs' claims for injunctive relief and plaintiffs are entitled to appeal therefrom; that all costs of this action are taxed to the plaintiffs.)
- Jun 30 Notice of Appeal -filed.
Bond for cost on Appeal -filed.
- Jul 13 Transcript of Record on Appeal to Court of Appeals
- 1973
- May 1 Judgment of United States Court of Appeals for the Eight Circuit of April 27, 1973 -filed. [. . . it

is now here ORDERED and ADJUDGED by this Court that the judgment of said District Court in this cause be, and the same is hereby, reversed. And it is further ORDERED by this Court that this cause be, and it hereby, remanded to the said District Court for proceedings in accordance with the majority opinion of this Court. . .]

Cost statement mailed

- May 9 Injunction and Judgment issued in compliance with Mandate -Filed. (In accordance with Mandate received from the Court of Appeals for the Eighth Circuit: The defendants and each of them are hereby perpetually enjoined and restrained as follows: 1. When the needs of eligible children require it, special personnel services may be furnished under Title I of the Elementary and Secondary Education of 1965 by the public agency on private as well as public school premises. 2. Based on deter,omed meed, (sic) all Title I ESEA Applications shall provide services and activities to private school pupils as to those provided public school pupils. 3. Transportation free to private school pupils as to those provided to public school pupils. 4. Applications under Title I ESEA, shall evidence that knowledgeable persons have been consulted in planning and evaluation of Title I projects. 5. Defendants enjoined from approving applications by LEA for a Title I Grant unless such application complies with this Mandate. 6. Defendants are ordered to conform all regulations, instructions, etc., to the provisions of this Order and Mandate. 7. Defendants are ordered to noticy (sic) all public school and private school administrators of the rights of private school pupils by distributing to them a copy of

this Injunction and Judgment. 8. Defendants to make available on a permanent basis for inspection and copying by the plaintiffs all records and documents regarding ESEA. 9. IT IS ORDERED that this Injunction and Judgment shall be effective forthwith and that this Court retains continuing jurisdiction of this litigation. Costs to be eaxed (sic) to defendants. WRC) copies mailed to list received from secretary to Judge Collinson.

May 30 Application for refund -filed.

Order on Application of plaintiffs -filed. [it is ORDERED that the Two Hundred Fifty Dollars (\$250.00) bond deposited in the Court by plaintiffs be returned to plaintiffs]

June 6 Notice of Appeal - filed. Copies mailed to counsel.

COMPLAINT

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI

No. 18248-2

ANNA BARRERA, individually, and as Next Friend for JOANNA BARRERA, PATRICIA BARRERA, DIANA BARRERA, MARIA BARRERA, minors, 2706 Madison, Kansas City, Missouri, ODIS BROWN, individually and as Next Friend for RICHARD BROWN, a minor, 1930 East 17th Street, Kansas City, Missouri, BILLIE HAYES, individually and as Next Friend for ELAINE HAYES, EVELYN HAYES, GEORGE HAYES, BILLY JOE HAYES, minors, 2729 Highland, Kansas City, Missouri, GARRETT JONES, individually and as Next Friend for JANICE JONES, a

minor, 3222 Victor, Kansas City, Missouri, VINANCIO REA, individually and as Next Friend for ESTEBEN REA, a minor, 1625 Summit, Kansas City, Missouri, PAUL ROJAS, individually and as Next Friend for YOLANDA ROJAS, MARIO ROJAS, KATRINA ROJAS, minors, 2008 Jefferson, Kansas City, Missouri, PATRICIA WYATT, individually and as Next Friend for KEVIN WYATT, 2905 East 29th Street, Kansas City, Missouri, RAFAEL ZAPIEN, individually and as Next Friend for ANNA LISA ZAPIEN, REGINA ZAPIEN, HOPE ZAPIEN, RUBY ZAPIEN, minors, 2305 Summit, Kansas City, Missouri,

PLAINTIFFS,

vs.

HUBERT WHEELER, individually and in his capacity as COMMISSIONER OF EDUCATION, STATE OF MISSOURI, Jefferson Building, Jefferson City, Missouri, MISSOURI STATE BOARD OF EDUCATION, Serve J. Warren Head, President and Chief Executive Officer, Jefferson Building, Jefferson City, Missouri, J. WARREN HEAD, individually and as President and Chief Executive Officer of State Board of Education, Palmyra, Missouri, DALE M. THOMPSON, individually and as member of the State Board of Education, Seventh Floor, City National Bank Building, Kansas City, Missouri, MRS. TRUE DAVIS, individually and as member of the State Board of Education, 503 N. 5th Street, St. Joseph, Missouri, JACK WEBSTER, individually and as member of the State Board of Education, 2400 East Bennett, Springfield, Missouri, ELSTON J. MELTON, individually and as member of the State Board of Education, Boonville, Missouri, W. CLIFTON BANTA, individually and as member of the State Board of Education, 701 East Cypress, Charleston, Missouri, SIDNEY R. REDMOND, individually and as member of the State Board of Education, 705 Chestnut Street, St. Louis, Missouri, F.

BURTON SAWYER, individually and as Vice-President
and member of the State Board of Education, 919 West
Adams Avenue, Kirkwood, Missouri,

DEFENDANTS.

COUNT ONE

Come now the Plaintiffs and for their cause of action
in Count One of their Complaint herein state to the Court
as follows:

1. The action arises under: The First Amendment
to the Constitution of the United States; The Fourteenth
Amendment to the Constitution of the United States, Sec-
tion 1; Title 42, United States Code, Section 1983 (Act of
April 20, 1871, 17 Stat. 13); Title 20, United States Code,
Sections 241a through 241m, 242, 243, and 244 (Public
Law 89-10 as amended by Public Law 89-750 and Public
Law 90-247), hereinafter referred to as the Elementary
and Secondary Education Act of 1965, as hereinafter more
fully appears; the matter in controversy exceeds, exclusive
of interest and costs, the sum of Ten Thousand Dollars.

2. This action is one to redress the deprivation, un-
der color of state law, statute, ordinance, regulation, cus-
tom, and usage, of a right, privilege or immunity secured
by the Constitution of the United States and by an Act
of Congress providing for equal rights of citizens and of
all persons within the jurisdiction of the United States as
hereinafter more fully appears. Additionally, therefore,
the jurisdiction of this Court is based upon Title 28, United
States Code, Section 1343 (3).

3. The Plaintiffs, Joanna Barrera, Patricia Barrera,
Diana Barrera, Maria Barrera, Richard Brown, Elaine
Hayes, Evelyn Hayes, George Hayes, Billy Joe Hayes, Janice
Jones, Esteben Rea, Yolanda Rojas, Mario Rojas, Katrina

Rojas, Kevin Wyatt, Anna Lisa Zapien, Regina Zapien, Hope Zapien, and Ruby Zapien are minors and appear herein by their Next Friends. Plaintiffs are all residents of the Western District of the State of Missouri and are citizens of the United States. The Infant Plaintiffs are educationally deprived children within economic deprived areas attending nonpublic schools in the Western District of the State of Missouri and are beneficiaries within the definition and intent of the Elementary and Secondary Education Act of 1965.

4. The Plaintiffs, Anna Barrera, Odis Brown, Billie Hayes, Garrett Jones, Vinancio Rea, Paul Rojas, Patricia Wyatt and Rafael Zapien are appearing as Next Friends of the Infant Plaintiffs, and in their own behalf, and are the parents of the respective Infant Plaintiffs, are taxpayers, residents and citizens of the Western District of the State of Missouri, and are parents of educationally deprived children attending nonpublic schools. Some Plaintiffs attend nonpublic schools by reason of their religion, belief and persuasion, and the Plaintiff parents have selected nonpublic schools for the education of their children in the exercise of their duty, responsibility and right to direct the education of their children.

5. The Infant Plaintiffs are members of a class of persons throughout the State of Missouri who are educationally deprived children attending nonpublic schools in the State of Missouri and the intended beneficiaries of the Elementary and Secondary Education Act of 1965, Title I, or are the parents and natural guardians thereof. The members of the class are very numerous and it is impracticable to bring them all before the Court. The Plaintiffs will fairly insure the adequate representation of all members of the class. The rights enforced for and on behalf of the members of the class are of a joint and a common

character. The Plaintiffs further state that there are common questions of law and fact involved, and common relief sought.

6. Unless otherwise stated, the term Plaintiffs as used herein is intended to include not only the named Plaintiffs, but also, all members of the class of persons in the State of Missouri similarly situated,—that is, pupils attending private or nonpublic schools who are educationally deprived and otherwise the intended beneficiaries of the Elementary and Secondary Education Act of 1965, Title I, and the parents and natural guardians of such pupils.

7. The Defendant, Hubert Wheeler, is the Commissioner of Education of the State of Missouri and is sued individually and in his official capacity as Commissioner of Education of the State of Missouri. The Defendant Commissioner of Education is a resident of, and maintains his office at Jefferson City, Missouri.

8. All other Defendants are members of the State Board of Education of the State of Missouri, and are sued both as individuals, and in their official capacity as members of the State Board of Education of the State of Missouri. The Defendants, members of the State Board of Education, constitute the state educational agency for the State of Missouri within the definition of the Elementary and Secondary Education Act of 1965, Title I. The official office and principal place of doing business of the State Board of Education is in the Western District of Missouri, and the residence of Defendant Dale M. Thompson is in Jackson County, Missouri, as appears in the caption hereof, and the residence of Defendant Mrs. True Davis is in Buchanan County, Missouri, as appears in the caption hereof, and the residence of Defendant Jack Webster is in Greene County, Missouri, as appears in the

caption hereof, and the residence of Defendant Elston J. Melton is in Cooper County, Missouri, as appears in the caption hereof, and said Defendants are residents of the Western District of Missouri.

9. The acts of the Defendants hereinafter alleged were done and committed within the Western District of Missouri.

10. The Elementary and Secondary Education Act of 1965, Title I, is an Act and Statute of the Congress of the United States wherein the Congress planned and intended to provide financial assistance to local educational agencies serving areas with concentrations of children from low income families to expand and improve their educational programs, which contribute particularly to meeting the educational needs of educationally deprived children, and the Congress likewise made it its policy and intention to provide fair and equal participation in such assistance to those educationally deprived children who were and are enrolled in private and nonpublic secondary and elementary schools. The means, methods and regulations established for implementing and administering the Act provide that plans, projects and programs, as contemplated by Statute, be submitted to the State Board of Education for Missouri, on the condition that such plans, projects and programs provide for fair participation by educationally deprived children in private and nonpublic schools.

11. Under the Act and Federal Regulations, the Defendants review all applications for grants submitted by local educational agencies to determine whether the applications meet the requirements of the Elementary and Secondary Education Act of 1965, and Federal Regulations thereunder, and Defendants are commanded to disapprove such applications unless such applications effectively meet

the requirements of the aforesaid Act and Regulations, and unless the Defendants are able to assure the United States Commissioner of Education of compliance.

12. The Regulations established by the United States Commissioner of Education, at the order and direction of Congress, require that programs under Title I, Elementary and Secondary Education Act of 1965 provide equal educational services designed to meet the educational needs of educationally deprived children including those who are enrolled in private and nonpublic schools. Such children must be provided genuine opportunities to participate on a basis comparable to that used in providing for the participation in the plans and programs for educationally deprived children enrolled in public schools.

13. The Regulations established by the United States Commissioner of Education, at the direction of Congress, further require that representatives of pupils attending private or nonpublic schools participate in the planning, development and evaluation of educational programs under Title I, Elementary and Secondary Education Act of 1965.

14. The Regulations established by the United States Commissioner of Education, at the direction of Congress, authorize school personnel providing special educational services to be made available at the private or nonpublic school or other place where the pupil is located. The Regulations established by the United States Commissioner of Education further make it mandatory that projects and programs envisioned and intended by Title I, Elementary and Secondary Education Act of 1965, be carried out at locations where the needs of educationally deprived children can best be served.

15. In order to participate in the benefits of the Elementary and Secondary Education Act of 1965, the State Board of Education has given assurance to the United States Commissioner of Education that it and its local educational agencies have complied with all the requirements of the Elementary and Secondary Education Act of 1965, and it has assured and continues to assure the United States Commissioner of Education that it and its local educational agencies have and will perform all the obligations imposed by reason of the requirements established by the Elementary and Secondary Education Act of 1965, and the State Board of Education has accepted the conditions, limitations and directions of the Act, and Regulations and orders enacted pursuant thereto.

16. Relying on the assurance as hereinabove set out, Federal funds have been annually allocated and expended under Elementary and Secondary Education Act of 1965, Title I, to Defendants to be used for the benefit of educationally deprived children in Missouri have been as follows:

| <u>Fiscal Year</u> | <u>Allocated</u> | <u>Expenditures</u> |
|--------------------|------------------|---------------------|
| 1966 | \$30,517,473.00 | \$23,630,170.00 |
| 1967 | 23,919,082.00 | 23,293,439.00 |
| 1968 | 24,661,296.00 | 24,160,970.00 |
| 1969 | 23,127,206.00 | 22,736,434.00 |

17. There are One Hundred and Seventy-Four Thousand children enrolled in private or nonpublic schools in the State of Missouri, constituting Sixteen (16%) per cent of the total school enrollment of the State of Missouri and Sixteen (16%) per cent of the educationally deprived children are now enrolled in private or nonpublic schools in the State of Missouri.

18. The Defendants herein, and each of them, and the predecessors of some of them, acting jointly and severally, in their own behalf and in their official positions, and acting separately and individually as well as collectively, from the time of the inception of the implementation of the Elementary and Secondary Education Act of 1965, beginning in October of 1965 and continuing to the date of the filing of this Complaint, have acted, and continued to act, under the color and pretext of state laws, statutes, customs and usages, and have acted under the pretext and color of their assertion that state law prohibits the implementation of the Elementary and Secondary Education Act of 1965 insofar as such act benefits educationally deprived children in private and nonpublic schools, in that the Defendants have acted under the pretext and color of purported state law and usage and have prohibited and refused the providing of educational services in and for private and nonpublic school pupils who are educationally deprived, and have prohibited and refused the furnishing of special instructors and teachers in specific fields for private and nonpublic school children, and acting under the pretext and color of such purported state laws and usages, the Defendants have consistently and willfully denied the Plaintiffs and all other persons in the State of Missouri similarly situated the advantages and benefits of the Elementary and Secondary Education Act of 1965, and have attempted to provide colorable compliance with the Elementary and Secondary Education Act of 1965 by providing classes at public school locations for private and nonpublic school children on Saturdays or late in the evenings or otherwise in such means and other methods that are unsuitable, impracticable and impossible, and in violation of the Act and Regulations, and the Defendants, and each of them, have advised and informed the local educational agencies and school district admin-

istrators throughout the State of Missouri that projects and plans suggested or proposed by such local educational agencies which would provide fair and equal participation by private and nonpublic school children should not be submitted to the State Board of Education, and that the same would be disapproved upon presentation, and the effect and result, as fully intended and planned by the Defendants and each of them and their predecessors, has been to deprive the Plaintiffs, and all persons similarly situated in the State of Missouri, of the benefits and advantages and uses of the Elementary and Secondary Education Act of 1965, as contemplated and directed by the Congress of the United States.

19. That the actions of the Defendants as pleaded herein constitute unlawful and unconstitutional discrimination against the Plaintiffs and others similarly situated, and that this discrimination is violative of the First Amendment of the Constitution of the United States, and is violative of the Section 1 of the Fourteenth Amendment of the Constitution of the United States in that it works an obstacle and hardship upon those exercising their right to select a private or nonpublic school for elementary and secondary education, and is a denial of equal protection of the laws and is a violation of the process of law, and is a deprivation of rights, privileges and immunities secured by the Constitution and Laws as set forth herein and these acts are committed under the color of statute, regulation, custom or usage of the State of Missouri, and are a denial of the Plaintiffs' rights and the rights of those similarly situated in the State of Missouri.

20. Defendants under the color of state laws and regulations have refused and continue to refuse to accept or approve project applications under Title I, Elementary and Secondary Education Act of 1965, by local educational

agencies which would include the use of federally paid personnel on nonpublic school premises.

21. As a result of being deprived of educational benefits by Defendants, Plaintiffs will be less skilled, educated and prepared to obtain gainful employment, exercise civic responsibilities and otherwise beneficially take part in the society in which they mature and live.

22. Defendants have failed to enforce requirements of the Elementary and Secondary Education Act of 1965, that nonpublic school administrators acting in behalf of Plaintiffs participate in the planning, development and evaluation of projects to be implemented under the Elementary and Secondary Education Act of 1965, Title I.

23. Defendants have failed to enforce the requirement of the Elementary and Secondary Education Act of 1965 that pupils of nonpublic schools equitably participate on a basis comparable with other pupils.

24. Defendants, contrary to Law, Regulations and other Directives, and in violation of assurances to the United States Office of Education, failed to disapprove projects of the Elementary and Secondary Education Act of 1965, Title I, which projects violate the Act and Regulations.

25. Defendants' actions have resulted in programs which are both educationally and economically wasteful and unsound, and which fail to meet the special educational needs of Plaintiffs and other educationally deprived children.

26. Defendants, contrary to Federal Law, Regulations and directives, and contrary to the assurances given the United States Commission of Education, have encouraged the unlawful use of Federal funds, in that they have

allowed Federal funds to be used to supplant local educational resources. As a result, Federal funds intended for the benefit of Plaintiffs and other educationally deprived children have been diluted and reduced.

27. Plaintiffs have used and exhausted all informal remedies which may be deemed to have been provided by Law, and Plaintiffs state there are no administrative remedies presently available for the redress of their wrongs and injuries, and Plaintiffs have no adequate, full and complete remedy at law and seek herein equitable relief in the premises, and their damages herein are in the amount of Thirteen Million (\$13,000,000.00) Dollars.

WHEREFORE, the premises considered, in Count One of this Complaint, the Plaintiffs pray the Order and injunction of the Court:

(a) Restraining and enjoining the Defendants from interfering with obstructing or impeding the flow of the advantages and benefits of the Elementary and Secondary Education Act of 1965, to the Plaintiffs herein, and all persons similarly situated as described above.

(b) Ordering and Directing the Defendants, by means of mandatory injunction, to direct and propose plans, and to recommend and suggest projects and plans to local agencies and school districts in the State of Missouri, wherein the Plaintiffs and all persons similarly situated can receive the full and fair benefits of the Elementary and Secondary Education Act of 1965.

(c) Restraining and enjoining the Defendants from discriminating against private and nonpublic school pupils, who are educationally deprived, in any respect relating to the funds, advantages and benefits provided by the Elementary and Secondary Education Act of 1965.

(d) Ordering Defendants to develop with the participation of Plaintiffs and their attorneys a detailed plan to assure that both public and private school administrators are fully informed of the rights of nonpublic school pupils to participate in projects authorized by the Elementary and Secondary Education Act of 1965, Title I, and to devise adequate forms, procedures and other means to ascertain that requirements of Federal Law and Regulation regarding the participation of nonpublic school pupils are fully complied with, and to submit such plan to the Court for approval and enforcement.

(e) Enjoining Defendants from disapproving projects authorized by the Elementary and Secondary Education Act of 1965, which projects include the use of federally paid school personnel on nonpublic school premises.

(f) Enjoining the Defendants from approving any project authorized by the Elementary and Secondary Education Act of 1965 which fails to clearly evidence the actual exercise of the right of representatives of pupils in private or nonpublic schools to participate in the planning, development and evaluation of such projects.

(g) Enjoining the Defendants from approving any project authorized by the Elementary and Secondary Education Act of 1965 which fails to clearly show that provision has been made for equitable participation by pupils of nonpublic or private schools on a basis fairly comparable to the services provided pupils in public schools.

(h) Ordering and directing Defendants to immediately undertake a program through written notices, meetings and public announcements, to inform public school and nonpublic administrators of their rights and duties under the Elementary and Secondary Education Act of 1965, regarding the participation of pupils attending non-public schools.

(i) Ordering and directing Defendants to make available on a permanent and continuing basis, for convenient inspection by Plaintiffs or their representatives during regular office hours, all records and documents regarding the Elementary and Secondary Education Act of 1965, and its implementation in the State of Missouri.

(j) Making and entering its Order and injunction as may be properly and reasonably required to effectuate the Decree and Judgment of the Court herein in providing full and complete remedy to the Plaintiffs and other persons similarly situated under the premises stated herein, and for the costs of the Plaintiffs incurred and expended herein.

COUNT TWO

For Count Two of their Complaint herein, the Plaintiffs state to the Court:

1. That they incorporate all of the allegations contained in Count One of their Complaint as though fully and completely set forth herein.

2. That the Defendants have, and will, deprive the Plaintiffs of their rights, privileges and immunities secured by the Constitution and Laws of the United States, under color of statute, ordinance, regulation, custom and usage of the State of Missouri, and have caused the Plaintiffs to be subjected to a deprivation of their rights, privileges or immunities secured by the Constitution and Laws of the United States.

3. That the Defendants have refused to properly prepare and disseminate information concerning the implementation of the Elementary and Secondary Education Act of 1965, Title I, and have refused and failed to meet and confer with persons necessarily and properly inter-

ested and concerned with the implementation of the Elementary and Secondary Education Act of 1965, Title I, as it relates to pupils attending private and nonpublic schools in the State of Missouri, and the Defendants continue to refuse, and fail to do so although they have been consistently requested to arrange such meetings and to furnish such information.

4. That in October of 1965, the Defendants adopted and promulgated a purported regulation under which they seek to prohibit school and educational personnel employed in implementation of the Elementary and Secondary Education Act of 1965, Title I, from rendering and furnishing educational services to educationally deprived children in and on the premises of nonpublic schools; the Defendants have adopted and enforced this purported regulation, contrary to the counsel, advice and opinion of the Attorney General of the State of Missouri as early as November, 1965, that such regulation was not authorized by State Laws, that such regulation was contrary to the Federal Regulations and that such regulation was in violation of the assurances given to the United States Commissioner of Education by the Defendants herein.

5. That thereafter, on January 29, 1970, the Attorney General of the State of Missouri formulated and issued his official Opinion wherein it was stated that the Laws of the State of Missouri did not prevent or prohibit educational or school personnel, who received compensation from funds derived from the United States pursuant to the Elementary and Secondary Education Act of 1965, Title I, from rendering and providing educational services in and on the premises of private and nonpublic schools in the State of Missouri (See Opinion of the Attorney General, No. 26, Conway, January 29, 1970); that nevertheless, with full knowledge of such Opinion, the Defend-

ants proceeded to adopt a resolution and reaffirmed the prior regulation and to take further steps stating that they would not abide by such Opinion and that they would discourage and disapprove the use of school or educational personnel in and on the premises of private or nonpublic schools, even though the employment of such personnel was funded exclusively by the United States pursuant to the requirements of the Elementary and Secondary Education Act of 1965, Title I.

6. That the Defendants have willfully disregarded and ignored the requirements and mandate of the United States Laws and Regulations, as well as the assurances given by them to the United States Commissioner of Education, in that they have failed and refused to disapprove projects planned and contemplated pursuant to the Elementary and Secondary Education Act of 1965, Title I, which plans and projects are in violation of the lawful requirements for participation of those children attending private and nonpublic schools.

7. That the Defendants have willfully and in disregard of the requirements of the United States Laws and Regulations, and the assurances given by these Defendants to the United States Commissioner of Education, failed and refused to enforce the requirement that representatives of such children in private and nonpublic schools participate in the planning, development and evaluation of projects contemplated by the Elementary and Secondary Education Act of 1965, Title I.

8. That the Defendants have willfully failed to promulgate information and advice to the representatives of pupils and children in private and nonpublic schools, and to nonpublic school administrators, as well as local educational agencies, regarding the obligation of the Defend-

ants to provide for the participation of nonpublic and private school pupils in projects and plans enacted and rendered pursuant to the Elementary and Secondary Education Act of 1965, Title I.

9. That the Defendants have willfully, in violation of the Regulations and assurances set forth, failed to present to the United States Commissioner of Education, a disclosure of the statements and charges made by children and pupils of private and nonpublic schools through their representatives, and have failed and refused to submit a summary to the United States Commissioner of Education concerning the result of investigations made, and have willfully failed to make further investigations, although requested to do so by the pupils and children in private and nonpublic schools through their representatives.

10. That the acts of the Defendants herein were done and committed in bad faith, wrongfully, willfully, maliciously, intentionally and contrary to, and in spite of, competent opinion and advice.

11. That the monies and funds disbursed and distributed pursuant to the requirements of the Elementary and Secondary Education Act of 1965, Title I, to the Defendants from the United States, constitute a separate and special fund to be used fully and exclusively for the purposes set forth in the Act, and for the educational benefit of the Plaintiffs and all other such persons similarly situated; that thereby the Plaintiffs and all other educationally deprived children in the State of Missouri within economically deprived areas attending nonpublic and private schools are some of the beneficiaries of the trust necessarily created and constituted of such funds pursuant to the directive and requirements of the Elementary and Secondary Education Act of 1965, Title I.

12. That the Defendants are constituted the Trustees of such trusts, and as such have accepted the terms of the trust and have assured the United States Commissioner of Education that the State Board of Education and the local educational agencies have complied with the requirements and conditions of the trust as prescribed and set forth in the Elementary and Secondary Education Act of 1965, Title I, and the Regulations enacted pursuant thereto, and the Defendants have given assurances that the State Board of Education and local educational agencies have performed all of the obligations and conditions imposed upon them in connection with the performance of this trust, and Defendants have sought and received funds from the Commissioner of Education of the United States in reliance upon the assurances of the Defendants that they have and will comply with the terms, conditions and requirements of such trust.

13. That the Defendants have in fact and in truth failed and refused to comply with the requirements and conditions of the trust as set out and prescribed in the Elementary and Secondary Education Act of 1965, Title I, and have used and distributed such trust funds as were intended for the benefit of the Plaintiffs and for such other persons similarly situated in the State of Missouri, for uses and purposes other than for the benefit of the Plaintiffs, and such other unlawful and improper distributions and disbursements of said funds for other purposes and uses, constitute and render a breach of the trust and of the directive and conditions imposed by the Elementary and Secondary Education Act of 1965, Title I, and by the Federal Regulations enacted pursuant thereto.

14. That to date hereof, the Defendants have improperly and unlawfully distributed approximately \$13,000,000.00 in the method and manner pleaded herein.

WHEREFORE, the premises considered, Plaintiffs pray the decree and judgment of this Court:

(a) Requiring and directing the Defendants and each of them to account for the funds and monies received under Title I of the Elementary and Secondary Education Act of 1965, with a separate and exact accounting of the use of any of such monies or funds for the Plaintiffs and other children in private and nonpublic schools, and

(b) Ordering and directing the Defendants to render an accounting determining the amount of funds and monies wrongfully distributed and disbursed and not used for the benefit of the Plaintiffs and for such other persons as are similarly situated, and

(c) Ordering and directing the Defendants to restore such funds in the appropriate amount of \$13,000,000.00 to the State Board of Education, or to the substitute Trustee as prayed for herein, with a further direction that said funds be used exclusively for the purposes contemplated and stated in the Elementary and Secondary Education Act of 1965, Title I, for children enrolled in private and nonpublic schools, and

(d) Ordering and directing the Defendants to withhold the necessary amounts from further allocation of funds and monies of the United States which may be equal to the amount of any part of the approximately \$13,000,000.00 which is not recovered, as prayed for herein, and

(e) A Judgment of this Court appointing and establishing a substitute or alternate Trustee to administer the expenditure and disbursement of funds adjudged to be recovered prayed for herein, and of funds to be received in the future from the United States in amounts to be deter-

mined as being fair and equal in proportion to the number and need of educationally deprived children in attendance at nonpublic schools, and

(f) Entering Judgment for such other and further relief to these Plaintiffs as to the Court seems proper and required from time to time to adequately and completely carry out the mandates of the Judgment herein, and of the directives and requirements of the Act, and for Judgment for the Plaintiffs' costs incurred herein.

Downey, Sullivan and Fitzgerald
Thomas M. Sullivan
Edward L. Fitzgerald
Suite 700, 112 East Tenth Street
Kansas City, Missouri 64106
842-3922

Louis C. DeFeo, Jr.
1204 Elm Street
Jefferson City, Missouri
By /s/ Thomas M. Sullivan
Attorneys for Plaintiffs

ANSWER OF DEFENDANTS**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI**

[Title Omitted in Printing]

Come now the defendants, and for their joint and separate answer to plaintiffs' complaint:

COUNT ONE

1. Admit that the matter in controversy exceeds, exclusive of interest and costs, the sum of \$10,000.00, and that the plaintiffs rely upon the amendments and other authorities cited in Paragraph 1 of Count One of plaintiffs' complaint, but deny each and every other allegation contained therein.

2. Deny all of the allegations contained in Paragraph 2 of Count One of plaintiffs' complaint.

3. State that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 3, 4, 5 and 6 of Count One of plaintiffs' complaint.

4. Admit that all of the allegations contained in Paragraph 7 of Count One of plaintiffs' complaint were true at the time of the filing of said complaint, that defendant Hubert Wheeler is still a resident of Jefferson City, Missouri but deny all other allegations contained therein, defendant Hubert Wheeler having retired and been replaced as Commissioner of Education since April 6, 1970.

5. Admit that at the time of the filing of plaintiffs' complaint all of the allegations contained in Paragraph 8 of Count One thereof were true except that defendant Missouri State Board of Education has never itself been a member of the State Board of Education of the State of Missouri, but deny the applicability and truth of said allegations at this time, many of the said members of defendant State Board of Education having been replaced by new members since April 6, 1970.

6. Deny the allegations contained in Paragraph 9 of Count One of plaintiffs' complaint.

7. Admit that the Elementary and Secondary Education Act of 1965, Title I, is an Act and Statute of the Congress of the United States but deny each and every other allegation contained in Paragraph 10 of Count One of plaintiffs' complaint.

8. Admit the allegations contained in Paragraph 11 of Count One of plaintiffs' complaint.

9. Admit the allegations contained in Paragraph 12 of Count One of plaintiffs' complaint.

10. Admit that Section 116.19 of the Regulations established by the United States Commissioner of Education require that the needs of educationally deprived children enrolled in private schools, the number of such children who will participate in the program and the types of special educational services to be provided for them shall be determined, after consultation with persons knowledgeable of the needs of these private school children, but deny each and every other allegation contained in Paragraph 13 of Count One of plaintiffs' complaint.

11. Admit that Section 116.19 of the Regulations established by the United States Commissioner of Education

provide that public school personnel may be made available on other than public school facilities under certain circumstances, but deny each and every other allegation contained in Paragraph 14 of Count One of plaintiffs' complaint.

12. Admit the allegations contained in Paragraph 15 of Count One of plaintiffs' complaint.

13. Deny the allegations contained in Paragraph 16 of Count One of plaintiffs' complaint.

14. State that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17 of Count One of plaintiffs' complaint.

15. Admit that during their respective terms of office from the inception of the Elementary and Secondary Education Act of 1965 they have exercised their discretionary authority by refusing to make public school personnel available on other than public school facilities during regular school hours, but deny each and every other allegation contained in Paragraph 18 of Count One of plaintiffs' complaint.

16. Deny all of the allegations as contained in Paragraph 19 of Count One of plaintiff's complaint.

17. Admit that during their respective terms of office they refused and continued to refuse to accept or approve project applications under Title I, Elementary and Secondary Education Act of 1965, by local educational agencies which would include the use of Federally paid personnel on non-public school premises during regular school hours because there is no requirement whatsoever under said Act that requires the use of Federally paid personnel on non-public school premises, but deny each and every other allegation contained in Paragraph 20 of Count One of plaintiffs' complaint.

18. Deny all of the allegations contained in Paragraphs 21, 22, 23, 24, 25, 26 and 27 of Count One of plaintiffs' complaint.

19. State that Count One of plaintiffs' complaint should be dismissed for failure to state a claim upon which relief can be granted.

20. State that all actions taken by the defendants in administering the Elementary and Secondary Education Act of 1965 have periodically fully been reported to the United States Commissioner of Education as required by the Act. Moreover, the defendants' administration of the Act has been the subject of audit by the office of the U. S. Commissioner. At no time in connection with the matters complained of by the plaintiffs has the Commissioner or any other Federal officer expressed disapproval of the defendants' administration of the Act (other than a suggestion that equipment purchased with Federal funds has been permitted on occasion to remain on non-public premises longer than necessary, and that non-public school pupils were allowed to participate in Title I, ESEA projects who were not so educationally deprived as required of public school pupils). Accordingly, the plaintiffs' complaints which are the basis of the present suit should have been presented initially to the U. S. Commissioner and plaintiffs have therefore failed to exhaust available administrative remedies.

21. State that the Act accords wide discretion to State and local authorities in formulating plans under the Act. It does not require that publicly employed personnel be assigned to perform services on non-public premises. It is the judgment of the defendants that assignment of public employees to render services on premises owned and controlled by non-public institutions gives rise to serious administrative and educational problems which may impair

the effectiveness of the plans formulated pursuant to the Act. It is the judgment of the defendants that the purposes and objectives of the Act in respect to children attending non-public schools (and many children attending public schools) can most effectively be achieved by making services for these children available at convenient publicly controlled locations other than the schools regularly attended by them and at times other than regular school hours and by allocating mobile equipment acquired with Federal funds for use in the non-public schools as authorized by both the Act and the Regulations of the U. S. Commissioner. In the absence of an abuse of discretion, established by clear and convincing proof, the court will not interfere with the administrative judgment of agencies to whom Congress has assigned responsibility for administering the Act. No evidence of abuse of discretion on the part of defendants herein has been presented or exists.

21. State that all Title I, ESEA funds allotted to the State of Missouri are paid into the Missouri State Treasury. Payment is effected under a letter-of-credit system and the amount is equal to that expended by the State in carrying out its State plan. Such payments to the Missouri State Treasury may be made in installments, in advance or by way of reimbursement. All such funds so paid into the Missouri State Treasury are subject to the laws and control of the State of Missouri, and cannot be disbursed except in compliance with Missouri law, which prohibits disbursement for the use and employment of public school personnel on private and non-public premises.

22. State that the Constitution, laws and public policy of the State of Missouri, as expressed by both the legislature and the judiciary, forbid the assignment of public school teachers to serve in sectarian schools or the use of tax-raised funds to pay for such services. A national pro-

gram such as that of the ESEA, must as a matter of national policy and the principles of cooperative federalism, be interpreted and administered in such ways as to avoid confrontation with and the overriding of state law and policy. This national policy of avoidance of conflict is implicit in the ESEA, and the plans adopted and carried out by the State of Missouri, with the approval of the U. S. Commissioner, avoid the conflict while at the same time achieving the Congressional purposes.

23. State that a statute should be construed, if at all possible, in such a way as not only to avoid the necessity of declaring it unconstitutional, but also to avoid grave doubts as to its constitutionality. To construe the ESEA as requiring the assignment of personnel paid out of tax-raised funds to perform services in sectarian schools would raise grave constitutional doubts and should be avoided, particularly where, as in the present case, the Congressional objectives can be achieved by other means.

24. State that plaintiffs' complaint raises unsettled questions of Missouri State law which should first be decided in the Missouri State courts.

WHEREFORE, having fully answered, defendants jointly and severally pray to be discharged with their costs.

COUNT TWO

1. Re-state their answer to Count One of plaintiffs' complaint to the extent that it is relevant and incorporated in Count Two of said complaint.

2. Deny all of the allegations contained in Paragraphs 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of Count Two of plaintiffs' complaint.

3. Admit that on January 29, 1970, the Attorney General of the State of Missouri issued his official Opinion No. 26 wherein he concluded that the Elementary and Secondary Act of 1965 provided that, under certain circumstances and to the extent necessary, public school personnel, paid with Federal funds pursuant to that program, might be made available on the premises of private schools to provide certain special services to eligible children and that Missouri law would not prevent public school personnel, paid with Federal funds, from providing those services on the premises of a private school, but deny each and every other allegation contained in Paragraph 5 of Count Two of plaintiffs' complaint. Defendants further state that said Attorney General's opinion is no more than it purports to be, a purely advisory opinion, which they are no more required to accept than any client is required to accept the advice of his attorney; that it did not spell out under what circumstances public school personnel paid with Federal funds could be made available on the premises of private schools, and, even if applicable, which defendants deny, it did not conclude that the furnishing of such personnel on private schools was mandatory.

4. State that in the complete absence of any requirement whatsoever that the defendants cause public school personnel to be made available for teaching services on private school premises and in the complete absence of any proof of defendants' abuse of their authority to exercise their discretion in administering the various programs offered by Title I of the Elementary and Secondary Act of 1965, plaintiffs have failed to state a claim upon which relief can be granted.

WHEREFORE, having fully answered, defendants jointly and severally pray to be discharged with their costs.

Respectfully submitted,

Kuraner, Dingman, Brockus, Kinton
& Lowe

By /s/ Harry D. Dingman
1111 City National Bank Building
Kansas City, Missouri 64106
221-3443

Attorneys for Defendants

Of Counsel:

Leo Pfeffer

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New York, New York 10028

PRETRIAL ORDER**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI**

[Title Omitted in Printing]

A pretrial conference was held in the Court's Chambers in Kansas City, Missouri on the 14th day of January, 1972. All attorneys were present and Commissioner Arthur Mallory was present at the invitation of the Court. The Court determined at this conference that it was desirable to separate the issues for trial in this case and set it for trial on Tuesday, February 22, 1972, at 9:30 a.m. on the sole issue of whether or not a permanent injunction should be entered in this case in favor of the plaintiffs and against the defendants as prayed for in the complaint.

At this trial the parties shall confine all their evidence to this sole issue and shall be limited in no way by this order in presenting other evidence at a later trial on any of the remaining issues.

From the previous discussions at the pretrial conferences, this Court believes that the primary issue to be decided by the Court in determining whether an injunction should be issued can be stated as follows:

Whether Title I, ESEA, and the Criteria established thereunder by the United States Commissioner of Education, requires that educational benefits provided by Title I be made available to educationally deprived children attending private schools on a basis that is equitable in quality, scope, and opportunity, to those available to educationally deprived children attending


public schools and that there must be an equitable sharing of educational resources provided by Title I so that the amount expended for each Title I project as to an educationally deprived child attending a private school be as nearly equal as possible to the amount so expended as to each educationally deprived child attending a public school.

Included in the issue so stated, and inherent therein, are the following related and subordinate questions:

(a) Are the defendants excused from complying with the requirements of Title I, ESEA, and the Criteria established thereunder by the United States Commissioner of Education, relating to the participation of educationally deprived children attending private schools, by reliance upon any interpretation of Missouri state constitutional provisions, statutes, regulations, or state court decisions?

(b) Is it lawful to make personnel, who are employed to implement Title I projects, available on private school premises during regular school hours in order to provide special services to educationally deprived children attending private schools?

/s/ William Collinson
District Judge



**ORDER DIRECTING THE ENTRY OF
A FINAL JUDGMENT**

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI**

[Title Omitted in Printing]

The Memorandum and Order filed in this case on June 2, 1972, denying plaintiffs' prayer for injunctive relief does not adjudicate all of the claims of the parties.

Plaintiffs' counsel has made a written request that the Court designate this order a final judgment under Rule 54(b) because the plaintiffs desire to appeal. The Court finds and determines that there is no just reason for delay in this matter and that the plaintiffs should be entitled to appeal from this order. The Court further finds that an appeal from this order will not delay the speedy adjudication of the other claims of the plaintiffs which have not yet been adjudicated.

For the above reasons, it is therefore

ORDERED that the Court's Memorandum and Order filed herein on June 2, 1972, shall be designated a final judgment as to plaintiffs' claims for injunctive relief; and

FURTHER ORDERED that the Clerk is hereby directed to enter a final judgment under Rule 54(b) of the Federal Rules of Civil Procedure. Defendants' counsel are directed to file a form of final judgment with the Clerk within five (5) days from this date.

/s/ Wm. R. Collinson
District Judge

JUDGMENT**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI**

[Title Omitted in Printing]

The sole issue of whether a permanent injunction should be entered in this case in favor of the plaintiffs and against the defendants, all as set forth in the pretrial order filed herein on January 18, 1972, came on for trial before the Court, Honorable William R. Collinson, District Judge, without a jury on February 22, 1972, and the Court having heard the evidence and having considered the arguments and statements of counsel, and the briefs and citations of authorities subsequently submitted, and a decision having been duly rendered,

It is Ordered and Adjudged that

(1) The plaintiffs' prayer for an injunction in this case is denied.

(2) The denial of plaintiffs' prayer for injunctive relief does not adjudicate other claims of the parties.

(3) There is no just reason for delay in this matter and the plaintiffs should be entitled to appeal from the Court's Memorandum and Order filed herein on June 2, 1972.

(4) The Court's Memorandum and Order filed herein on June 2, 1972, is designated as a final judgment as to plaintiffs' claims for injunctive relief and plaintiffs are entitled to appeal therefrom.

(5) That all costs of this action are taxed to the plaintiffs.

Dated at Kansas City, Missouri, this 12th day of June,
1972.

/s/ J. C. Truman
J. C. Truman
Clerk

ORDER

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543**

October 15, 1973

Leo Pfeffer, Esq.
15 East 84th Street
New York, N. Y. 10028

**RE: WHEELER ET AL. v. BARRERA
No. 73-62**

Dear Mr. Pfeffer:

The Court today took the following action in the above
case:

"The petition for a writ of certiorari is granted."

Enclosed are memorandums describing the time re-
quirements and procedures under the Rules.

The additional docketing fee of \$50, Rule 52(a) is due
and payable.

Very truly yours,

Michael Rodak, Jr., Clerk
By /s/ Helen K. Loughran
(Mrs.) Helen K. Loughran
Assistant Clerk

AIR MAIL
Encls.

Supreme Court of the United States

No. 73-62

Hubert Wheeler, et al.,

Petitioners,

v.

Anna Barrera, et al.

ORDER ALLOWING CERTIORARI. Filed **October 15**, 19 **73**.

The petition herein for a writ of certiorari to the United States Court of Appeals for the **Eighth**Circuit is granted.